UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
GEORGE L. RUSSELL, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

July 30, 2015

MEMORANDUM TO PARTIES RE: Blanca P. Cedillos-Guevara, et al. v. Mayflower Textile Services, Co., et al.
Civil Action No. GLR-14-196

Dear Parties:

Pending before the Court is Plaintiffs' Consolidated Motion for Preliminary Injunction (ECF No. 71), Motion to Amend the Complaint (ECF No. 86), and Motion for Additional Time for Class Member to Opt-In and for Other Relief (ECF No. 88). The Motions are ripe for disposition. The Court, having reviewed the Motions and supporting documents, finds no hearing necessary pursuant to Local Rule 105.6 (D.Md. 2014). For the reasons outlined below, Plaintiffs' Motion for Preliminary Injunction and Motion for Additional Time for Class Member to Opt-In and for Other Relief will be denied, and their Motion to Amend the Complaint will be granted.

Motion for Preliminary Injunction

Plaintiffs seek to preliminarily enjoin Defendants Mayflower Textile Services Co., Mukul Mehta, Argo Management Group, Inc., Villy's Corporation, Valentin Abgaryan, and East to West Enterprises from allegedly engaging in retaliatory conduct against them. The standard for the issuance of a preliminary injunction requires the plaintiff to establish "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). "All four requirements must be satisfied." Real Truth About Obama, Inc. v. Fed. Election Comm'n, 575 F.3d 342, 346 (4th Cir. 2009), vacated, 559 U.S. 1089 (2010) and adhered to in part sub nom. The Real Truth About Obama, Inc. v. F.E.C., 607 F.3d 355 (4th Cir. 2010) (citing Winter, 555 U.S. at 20).

On February 19, 2015, Plaintiffs filed a Motion to Amend Complaint seeking to add a retaliation claim on behalf of opt-in Plaintiffs Elda Giron and Reyna Lopez. (ECF No. 63). The Court, however, denied the Motion on April 15, 2015. (ECF No. 80). As such, Plaintiffs are unable to demonstrate a likelihood of success on the merits of the retaliation claim because there is no such claim before the Court. Accordingly, the Court will deny the Motion for Preliminary Injunction.

Motion to Amend Complaint

The Court issued an Amended Scheduling Order on June 18, 2014, which set the deadline for amending pleadings as August 18, 2014. (ECF No. 25). Plaintiffs, however, filed their second Motion to Amend on April 23, 2015. (ECF No. 86). Federal Rule of Civil Procedure 16(b)(4) states a scheduling order may be modified for good cause. Though Plaintiffs have not specifically requested a scheduling order modification, "after the deadlines provided by a scheduling order have passed, the good cause standard must be satisfied to justify leave to amend the pleadings." Nourison Rug Corp. v. Parvizian, 535 F.3d 295, 298 (4th Cir. 2008). The standard "focuses on the timeliness of the amendment and the reasons for its tardy submission; the primary consideration is the diligence of the moving party." Montgomery v. Anne Arundel Cnty., Md., 182 F.App'x 156, 162 (4th Cir. 2006) (citing Odyssey Travel Ctr., Inc. v. RO Cruises, Inc., 262 F.Supp.2d 618, 631-32 (D.Md. 2003)). The Court considers "whether the moving party acted in good faith, the length of the delay and its effects, and whether the delay will prejudice the non-moving party." Wonasue v. Univ. of Md. Alumni Ass'n, 295 F.R.D. 104, 107 (D.Md. 2013) (citing Tawwaab v. Va. Linen Serv., Inc., 729 F.Supp.2d 757, 768-69 (D.Md. 2010)).

"When at least some of the evidence needed for a plaintiff to prove his or her claim did not come to light until after the amendment deadline, a plaintiff has good cause for moving to amend at a later date." Wonasue, 295 F.R.D. at 107 (quoting Tawwaab, 729 F.Supp.2d at 768) (internal quotation marks omitted). Plaintiffs seek to add Service Industry Solutions, Inc. ("SIS"), North East Employment, Inc. ("NE"), First Management, Inc. ("FM"), Skilled Instant Service, Inc. ("SIS II"), John Williams, and Andrey Gustov as defendants in this action. Plaintiffs state that, after completing some discovery and obtaining information from opt-in plaintiffs, they determined the new defendants were necessary parties to this action. On September 10, 2014, Plaintiffs became aware of SIS, NE, and Gustov from Defendant's, Mayflower Textile Services Co., Answers to Plaintiffs' First Set of Interrogatories. (ECF No. 89-1) (identifying NE and SIS as "necessary parties"). On December 8, 2014, Plaintiffs determined that John Williams is the resident agent of NE. (ECF No. 86-5). Later, Plaintiffs learned of SIS II and FM after two opt-in plaintiffs joined this case in March and April 2015. It appears Plaintiffs were not aware of the information until after the amendment deadline passed, but filed their Motion within a few months of discovering it.

Defendants Mayflower Textile Services Co. and Mukul Mehta (jointly "the Mayflower Defendants") argue Plaintiffs did not act diligently in filing their Motion though they knew or had notice of the existence and role of NE, SIS, Williams, and Gustov after receiving the Mayflower Defendants' Answers to Interrogatories in September 2014. The Mayflower Defendants argue they will prejudiced by the delay in amending the Complaint. Whether a motion is prejudicial may be determined based on the nature and timing of the amendment. See Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006). A prejudicial amendment, for example, is one that raises a new theory requiring the gathering and analysis of facts not already considered, and is offered shortly before or during trial. Foman v. Davis, 371 U.S. 178, 182 (1962). Plaintiffs' proposed Amended Complaint does not raise any new theories of recovery and merely seeks to add six new defendants, two of whom the Mayflower Defendants stated were necessary parties. Though Plaintiffs learned of three of the additional parties seven months ago, the Court does not find that the delay will prejudice the Mayflower Defendants. See Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986) (stating mere delay is generally not enough). Discovery has not been completed in this matter and the discovery deadline is currently September 4, 2015. If necessary, the parties may be permitted to seek leave to extend the deadline.

The Mayflower Defendants also argue that allowing Plaintiffs to amend the complaint would be prejudicial because it would result in the parties restarting litigation. Specifically, the Mayflower Defendants state the amendment will alter the nature of the suit and "eviscerate" the Court's grant of conditional certification. The Court, however, is not persuaded that additional defendants will alter the nature of the suit as the proposed Amended Complaint does not add new claims or factual allegations.

Further, regarding conditional certification, the Court previously found that the named Defendants may qualify as joint or related employers because the Mayflower Defendants were authorized to fire employees, supervised them, controlled their work schedules and employment conditions, and maintained time clock records for each employee working in the facility, though Plaintiffs were hired and paid by different named Defendants. (ECF No. 43). The Court also found that Plaintiffs sufficiently demonstrated the putative class members are the victims of a common policy implemented by the named Defendants and, thus, similarly situated. (Id.). The proposed Amended Complaint includes the same factual allegations that Plaintiffs were not properly compensated by the various Defendants for regular and overtime hours worked. Plaintiffs were also allegedly hired and paid by the newly-added Defendants.[1] The newly-added Defendants, therefore, may also qualify as related employers. However, as the Mayflower Defendants note, Plaintiffs will be required to move to certify the class to include potential plaintiffs employed by the newly-added Defendants after they have been properly served with summons and a copy of the Amended Complaint. Nevertheless, the Court finds that Plaintiffs have demonstrated good cause to amend the Complaint.

Once good cause is established, the Court looks to Rule 15(a), which states that it should freely give leave to amend when justice so requires. Fed.R.Civ.P. 15(a)(2). The Court, however, has discretion to deny a motion to amend "when the amendment would be prejudicial to the opposing party, the moving party has acted in bad faith, or the amendment would be futile." Stanley v. Huntington Nat'l Bank, 492 F.App'x 456, 461 (4th Cir. 2012) (quoting Equal Rights Ctr. v. Niles Bolton Assocs., 602 F.3d 597, 603 (4th Cir. 2010)). Defendants do not argue Plaintiffs acted in bad faith or the claim is futile. Defendants only argue that the amendment would be prejudicial due to its delay. As stated above, the Court does not find that the delay will prejudice the Mayflower Defendants. The Court will, therefore, grant the Motion to Amend.

Motion for Additional Time for Class Member to Opt-In and for Other Relief

Plaintiffs request that the Court extend the opt-in period for potential class members to join this litigation. On February 3, 2015, the Court approved Plaintiffs' amended Notice of Collective Action, which stated potential plaintiffs must submit a Consent Form within ninety days. (ECF No. 57). The Notice is directed towards all current and former non-exempt hourly employees who worked at the Mayflower Laundry Facility in Baltimore, Maryland and received payments from Defendants

[1] Plaintiffs attached exhibits demonstrating Plaintiff Dora Ferrara was paid by SIS (ECF No. 86-1); Plaintiff Leonarda Garcia Beltran was paid by FM (ECF No. 86-3); and Plaintiff Gicela Raudales Galvez was paid by SIS II (ECF No. 86-4). The proposed Amended Complaint also alleges Gustov owns and/or controls Defendant Industry Cleaning Services, SIS, FM, and SIS II; and John Williams owns and/or operates Defendant East to West Enterprises, Inc. and NE. (ECF No. 86-10).

Mayflower Textile Services, Co., East to West Enterprises, Inc., Argo Management Group, Inc., Villy's Corporation, and Industry Cleaning Service LLC. (Id.). Because the Court will grant Plaintiffs' Motion to Amend to add six parties, the Notice must be further amended to include the newly-named Defendants. The Court will, therefore, deny Plaintiffs' request to extend the opt-in period as moot because the Notice no longer reflects the potential class members eligible to join this suit.[2]

Further, Plaintiffs request that the Court compel the Mayflower Defendants to produce documents and information in the possession of the remaining Defendants. Upon consideration of the Motion (ECF No. 88) and the Opposition thereto (ECF No. 90), the Court will deny the request as Plaintiffs have failed to demonstrate that the Mayflower Defendants are in possession, custody, or control of the information sought.

Lastly, Plaintiffs request that the Court permit them to deliver the Notice by alternative means. Because the present Notice no longer reflects the potential class members eligible to join the suit, the Court will deny Plaintiffs' request.

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction (ECF No. 71) and Motion for Additional Time for Class Member to Opt-In and for Other Relief (ECF No. 88) are DENIED, and their Motion to Amend the Complaint (ECF No. 86) is GRANTED. Despite the informal nature of this memorandum, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly and MAIL a copy to the parties at their addresses of record.

Very truly yours,

/s/

George L. Russell, III
United States District Judge

[2] Plaintiffs may seek to further amend the Notice to include the newly-added Defendant after service of process is completed and upon a motion to certify the new class.